

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOMMY TYRELL LEWIS,

Defendant-Appellant.

UNPUBLISHED

December 19, 2013

No. 312397

Wayne Circuit Court

LC No. 12-004381-FH

Before: JANSEN, P.J., and O'CONNELL and M.J. KELLY, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of resisting or obstructing a police officer without causing injury, MCL 750.81d(1). The trial court sentenced defendant to three years' probation. Defendant now appeals by right for the purpose of correcting the statutory descriptions and citations in the trial court's orders, which mistakenly indicate that defendant was convicted of resisting and obstructing while causing bodily injury. We remand for the ministerial task of correcting the order of conviction and sentence, the order of probation, and the order appointing appellate counsel, to reflect that defendant was convicted under subsection one of the resisting or obstructing statute, MCL 750.81d(1).

Defendant argues that the lower court committed plain error by citing the incorrect statute in its orders. We agree. The prosecutor originally charged defendant under subsection two of the resisting or obstructing statute, MCL 750.81d(2). Subsection two requires that the prosecutor prove the defendant resisted or obstructed police officers and that the defendant caused "a bodily injury requiring medical attention or medical care." *Id.* After hearing the evidence, the trial court found that the prosecutor had established the resisting or obstructing element of the offense, but had failed to establish the element of bodily injury. Accordingly, the trial court found defendant guilty under subsection one of the resisting and obstructing statute, MCL 750.81d(1). Subsection one does not require proof of bodily injury. Similarly, at sentencing the trial court noted that the prosecutor had not established the bodily injury element of subsection two.

However, the trial court's order of conviction and sentence, the order of probation, and the order appointing counsel all mistakenly reference subsection two of the statute. The prosecution has not filed a brief on appeal, and we find no explanation in the record for the erroneous citations in the trial court's orders. Accordingly, the orders must be corrected.

Defendant's conviction and sentence are affirmed, but the case is remanded to the trial court for correction of the erroneous statutory descriptions and citations in the order of conviction and sentence, the order of probation, and the order appointing appellate counsel. The corrected orders shall indicate that defendant was convicted under MCL 750.81d(1). The trial court shall forward a corrected copy of the order of probation to the Department of Corrections. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Peter D. O'Connell

/s/ Michael J. Kelly